

ITEM 9-D

CITY OF ALAMEDA

Memorandum

To: HONORABLE PRESIDENT AND MEMBERS OF THE
PLANNING BOARD

From: Margaret Kavanaugh-Lynch
Planning Services Manager

Date: April 9, 2012

Re: Alameda Municipal Code Text Amendment to revise the regulations governing the location of Massage Therapists and associated uses including Tattoo in the Community Commercial District.

BACKGROUND

Currently, massage businesses and/or technicians must be licensed by the City of Alameda Police Department or the State of California. A massage business (with a current City or State license) may be permitted with a conditional use permit in the C-2 Central Business District. (The Southshore Shopping Center is zoned C-2. Massage Envy is an example of a business that received use permit approval to locate at the Southshore Center.)

In contrast, Park Street and Webster Street business districts are zoned CC Community Commercial. In the CC district, massage is expressly prohibited unless it is an “accessory” use to another use, such as a hair salon. Typically, the City qualifies massage as “accessory” if no more than 2% of the floor area of the business is devoted to massage.

In partnership with the Park Street and West Alameda business associations, staff is recommending that the Planning Board approve an amendment to the CC Zoning District to allow “massage use” on the ground floor with a conditional use permit in the CC Zone (similar to the C-2 zone) and “massage use” on the second floor as a permitted use (“by right”).

In addition, at the request of the West Alameda Business Association (WABA), staff is recommending a change to the CC-district to prohibit tattoo businesses on the ground floor on Webster Street. A few years ago, the CC-District was modified to allow tattoo businesses by right on the ground floor and with a use permit above the ground floor along Webster Street. At the same time, the Park Street Business Association (PSBA) requested that tattoo businesses be permitted on the second floor but prohibited on the ground floor on Park Street. Shortly thereafter, a small tattoo business was approved with a use permit on a side street in the Webster Street district.

In 2011, a second and larger tattoo business requested a use permit to operate on the ground floor on Webster Street. The request generated a great deal of opposition on Webster Street and the applicant withdrew their application. WABA is now requesting

the regulations for tattoo businesses on Webster Street be amended to prohibit the use on the ground floor, identical to regulations in place on Park Street.

Economic Development Commission (EDC)

The EDC received a presentation on massage and tattoo businesses ordinance amendments on March 15, 2012. Regarding massage, the majority of the members were not supportive of storefront/ground floor locations on Park Street and Webster Street, however they would consider permitting such uses on side streets. The EDC emphasized that strict enforcement of massage businesses is essential to health of the commercial districts. On the issue of tattoo businesses, they had conflicting views, with some members supportive of the use on upper floors with a use permit, while two other members supported a complete ban on the use throughout the City.

ANALYSIS

Use Permits

In accordance with the Alameda Municipal Code, a conditional use permit is a permit process that provides the community and the City with an opportunity through the public hearing process to determine whether a proposed use is appropriate for the specific location and consider appropriate conditions under which they operate.

A conditional use permit requirement ensures that before any conditionally permitted use is granted approval to operate, the following steps must occur:

1. All property owners within 300 feet of the proposed site are provided notice of the proposal.
2. The Planning Board or the Zoning Administrator (acting for the Planning Board) provide an opportunity for a public hearing to consider public comments on the proposal.
3. Based upon the specifics of the proposal and the comments from the public, the Planning Board or the Zoning Administrator may approve the application, deny the application, or approve the application with conditions to ensure that the proposed use will comply with the findings for approval.

To approve or conditionally approve a conditional use permit, the Planning Board or the Zoning Administrator must make all four of the following findings.

1. The location of the proposed use is compatible with other land uses in the general neighborhood area, and the project design and size is architecturally, aesthetically, and operationally harmonious with the community and surrounding development.
2. The proposed use will be served by adequate transportation and service facilities, including pedestrian, bicycle and transit facilities.
3. The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity and will not have deleterious effects on existing business districts or the local economy.

4. The proposed use relates favorably to the General Plan.

All actions by the Zoning Administrator can be appealed to the Planning Board, and all Planning Board actions on use permits can be appealed to the City Council.

Staff Discussion

Although the use permit provides an opportunity for additional public and city scrutiny of a proposed business, it should be recognized that the process does add significant time and expense for proposed businesses. A typical use permit process will cost a new business between \$1,600 and \$2,000 in application fees and time and material costs for the City to process the application and hold the hearings. These processes typically take between one and three months depending on the complexity of the proposal. If the application is appealed, the costs and the time delays for the business increase. The time and expense of applying for a use permit represents a financial risk for a new business. A new business has no guarantee that at the end of the process they will be granted an approval. If a use permit is eventually denied, the business cannot get back the time or funds expended to pursue the use permit.

To remain competitive with other cities and be able to attract a variety of businesses to Alameda business districts, it is prudent to require the use permit process sparingly and only for those types of businesses that may require special review, special conditions, or simply may not be appropriate on certain parcels within a district. For example, gas stations are commonly a conditionally permitted use in most cities, because most cities would consider a gas station located on an interior lot a problem. Similarly, bars are often conditional uses, because although most cities allow bars, few cities would want a bar to locate on a parcel immediately adjacent to a school or hospital. In contrast, a toy store is almost always a permitted use (i.e. by right) in a retail district.

In the case of massage and tattoo businesses on Park and Webster Streets, the staff recommendation is based upon the following considerations:

A massage business on the second floor of an existing building on Park Street or Webster Street is not going to require any special conditions or limitations in addition to those that apply to all businesses in these areas (e.g. hours of operation, compliance with noise ordinance, etc.) Currently, in Alameda, the City or the State must license all massage business. This license would still be required even if the use is permitted "by right".

A massage business on the ground floor may require special conditions related to its floor plan to ensure that it is an asset to the streetscape. There are also some sites in which the use may not be appropriate, at all. The CC district is intended to be a pedestrian oriented, retail district. Office uses on the ground floor currently require use permits because an office use typically does not provide a pedestrian friendly "retail window" frontage on the ground floor and the priority for ground floor spaces are retail uses. For similar reasons, the city and the community may wish to carefully consider how a proposed ground floor massage use treats its window area. Often, massage

businesses with more than one technician have either a retail sales area near the windows that would offer skin care products and other ancillary products or a nicely decorated waiting area with a person greeting visitors and managing schedules and contributes to the pedestrian experience on street. In all cases, these are issues that can be resolved through the use permit process.

For many of these same reasons, Park Street chose to permit tattoo businesses on the second floor, but prohibit tattoo businesses to locate on the ground floor. The Park Street Business Association felt ground floor spaces should be preserved for retail, restaurants and other uses that absolutely require ground floor space, but that tattoo businesses could contribute to the mix and diversity of businesses on Park Street and bring new customers to the district. For these same reasons, staff is supporting the recommendation of WABA to prohibit tattoo businesses on the ground floor of Webster Street.

Planning and Economic Development staff agree that legally operated massage services and tattoo businesses can be a positive new business option to add to the mix of uses in the City's CC district. With the restrictions listed above, staff believes that the proposed amendments will serve the city's commercial districts well. Staff from both the planning and City Attorney's office will be working together to further amend the AMC to bring it into conformance with state law.

FISCAL IMPACT

The proposed changes could have a positive fiscal impact if the changes successfully clarify the City's regulations and permit a larger range of commercial services on Park Street and Webster Street.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The City of Alameda General Plan includes a number of policies that support actions by the City to allow for a broad range of commercial uses and services on Park Street and Webster Street.

ENVIRONMENTAL REVIEW

These proposed ordinance amendments are exempt from review under the California Environmental Quality Act pursuant to Categorical Exemption Section 15305 (Minor Alterations to Land Use Limitations).

PUBLIC NOTICE

A notice for this hearing was published in the Alameda Journal, and staff has been in constant communication with the Park Street Business Association (PSBA) and the

West Alameda Business Association (WABA). Both organizations are in support of the proposed changes to the ordinance.

RECOMMENDATION

Hold a public hearing and recommend the proposed ordinance amendments to the City Council for adoption.

Respectfully submitted,



Margaret Kavanaugh-Lynch
Planning Service Manager

Attachments:

1. Draft Ordinance